

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

<p>JAMES NAULT-HART,</p> <p style="text-align: center;">Movant,</p> <p style="text-align: center;">vs.</p> <p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">3:22-CV-03012-RAL</p> <p style="text-align: center;">ORDER DIRECTING SERVICE AND REQUIRING RESPONSE</p>
--	--

Movant James Nault-Hart filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255. Doc. 1. Nault-Hart asserts that he is actually innocent and that he pleaded guilty to failing to register as a sex offender when he moved to South Dakota on the advice of his attorney. Doc. 1-1 at 1. Nault-Hart argues that his attorney was ineffective in failing to investigate whether Nault-Hart was required to register as a sex offender under federal law. Id.; see also Doc. 1-2 at 2-3.

This Court is to dismiss a motion under § 2255 if it “plainly appears . . . that the moving party is not entitled to relief[.]” Rule 4(b), Rules Governing § 2255 Proceedings. Nault-Hart acknowledges that his motion is untimely under § 2255(f) but argues that a showing of actual innocence is not barred by § 2255(f)’s statute of limitations. See Doc. 1 at 11 (citing McQuiggin v. Perkins, 569 U.S. 383, 386 (2013)). Thus, this Court cannot determine with confidence that it “plainly appears” that Nault-Hart is not entitled to any relief, although ultimately that may be the case.

Nault-Hart has filed a motion to appoint counsel. Doc. 2. “A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case.” Stevens v. Redwing,

146 F.3d 538, 546 (8th Cir. 1998). In determining whether to appoint counsel, the Court considers the complexity of the case, the ability of the litigant to investigate the facts, the existence of conflicting testimony, and the litigant's ability to present his claims. Id. This Court will defer ruling on Nault-Hart's motion to appoint counsel until respondent has responded to Nault-Hart's § 2255 motion.

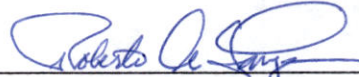
Therefore, it is hereby

ORDERED that the Clerk of Court serve a copy of all pleadings of record and this Order on Respondent. It is further

ORDERED that Respondent file an answer, and if it so chooses, a motion to dismiss and memorandum, within thirty days of service of the pleadings.

DATED June 22nd, 2022.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Roberto A. Lange", is written over a horizontal line.

ROBERTO A. LANGE
CHIEF JUDGE